

December 1, 2004

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Kenneth M. Reim

Date of Filing: November 2, 2004

Case Number: TFA-0076

On November 2, 2004, Kenneth M. Reim (the Appellant), filed an Appeal from a final determination that the Office of the Inspector General (OIG) of the Department of Energy (DOE) issued on September 22, 2004.^{1/} That determination concerned a request for information submitted by the Appellant pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. If the present Appeal were granted, OIG would be required to conduct a further search for responsive documents.

Background

On April 18, 2003, the Appellant submitted a FOIA request for the “status of follow up action on Audit Report 0589 by DOE/IG, DOE or other federal agencies [and] [c]orrespondence related to the ongoing IG Audit, and responses of the agency(s) being audited.” Request letter dated April 18, 2003, from Kenneth M. Reim to Abel Lopez, Director, Freedom of Information and Privacy Act Group (FOIA/PA), DOE. On May 9, 2003, FOIA/PA assigned the request to OIG to conduct a search of its files for responsive documents. Letter dated May 9, 2003, from Abel Lopez to the Appellant. On September 22, 2004, OIG responded that it had nothing responsive to the first part of the Appellant’s request, that is, the status of follow up action on Audit Report 0589. It released 10 documents to the Appellant that were responsive to the second part of his request; however, it redacted some information pursuant to Exemptions 5 and 6 of the FOIA.^{2/} Determination Letter dated September 22, 2004, from William S. Maharay, Deputy IG for Audit Services, IG, to the Appellant.

^{1/}Although the Appeal was received by this office on October 26, 2004, it did not include a copy of the determination letter, which is required by the FOIA regulations. This office received a copy of the September 22, 2004 Determination Letter on November 2, 2004.

^{2/}The Appellant is not appealing anything relating to the second part of his request.

On November 2, 2004, the Appellant appealed the September 22, 2004 determination to our Office. Appeal Letter dated October 19, 2004, from Kenneth M. Reim to Director, Office of Hearings and Appeals (OHA), DOE. In the Appeal, the Appellant claims that he is appealing what he sees as a non-responsive answer to the first part of his request regarding the status of follow up action on Audit Report 0589. He continues that if no follow up was completed, he wants to know why. *Id.* at 2-3.

Analysis

As an initial matter, with regard to the Appellant's question as to why there was no follow up on the Audit Report, we note that the FOIA is not a mechanism for answering questions. Under the FOIA, agencies are required only to release non-exempt, responsive documents; they are not required to answer questions about an agency's operations. *DiViaio v. Kelley*, 571 F.2d 538, 542-43 (10th Cir. 1978). Nevertheless, we did investigate the extent of the search conducted for documents relating to the status of follow up activities related to the Audit Report.

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Glen Milner*, 17 DOE ¶ 80,132 (1988).

We have contacted OIG to determine what type of search was conducted. OIG informed us that because this part of the request was so narrow, it was common knowledge that no separate piece of paper existed that was responsive. Anything possibly responsive to this part of the Appellant's request would be contained in the Department Audit Resolution Tracking System (DARTS), which is maintained by the Office of the Chief Financial Officer (CFO). CFO then determined that the National Nuclear Security Administration (NNSA) might have information responsive to that part of the request.^{3/} NNSA, as the concerned program office in the case of Audit Report 0589, is responsible for entering the information arising from the OIG Audit into the DARTS and updating it on a quarterly basis. After the information is entered into DARTS, OIG reviews the updates from the program office and inputs any OIG comments into DARTS. OIG advises us that it knew that it did not have anything responsive to the Appellant's request because it does not maintain any information after the Audit is completed. That information is placed into DARTS. Given

^{3/}It is our understanding that the Appellant has received a document from NNSA responsive to that part of his request. The determination from NNSA is not at issue in this Appeal.

the facts presented to us, we are convinced that OIG followed procedures which were reasonably calculated to uncover the material sought by the Appellant in his request. Accordingly, the Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Kenneth M. Reim, on November 2, 2004, Case No. TFA-0076, is hereby denied.
- (2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provision of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought either in the district where the requester resides or has a principal place of business or in which the agency records are situated or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: December 1, 2004